

# Successfully Surviving Litigation: Lessons Learned from Trial

## Land Trust Alliance Rally

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<p><b>Legal Issues</b></p> <ul style="list-style-type: none"> <li>- Pre-litigation:             <ul style="list-style-type: none"> <li>• State violation clearly, early</li> <li>• Identify remedies (restoration, damages, costs)</li> <li>• State willingness to litigate (if true)</li> <li>• File early placeholder claim with Terrafirma</li> </ul> </li> <li>- Plead every theory and form of relief</li> <li>- Name your defendants carefully</li> </ul>	<p><b>Land Trust</b></p> <ul style="list-style-type: none"> <li>- Standards and Practices work</li> <li>- Document, document, document</li> <li>- Clarity vs. tone in communication</li> <li>- Get excellent legal representation</li> <li>- Dedicate staff to manage case             <ul style="list-style-type: none"> <li>• Specific team to work with attorneys</li> <li>• Consider resulting impacts on regular operations</li> </ul> </li> <li>- Terrafirma is key, but be ready for additional costs</li> <li>- Learn from hard experiences and apply going forward</li> </ul>	<p><b>Terrafirma</b></p> <ul style="list-style-type: none"> <li>- Placeholder claims are essential</li> <li>- Terrafirma provides guidance as well as financial support</li> <li>- Claims committee may ask you hard questions; this is a good thing</li> <li>- Roll lessons from enforcement back into operating procedures: lessons learned = risk management</li> </ul>
<p><b>Legal Team</b></p> <ul style="list-style-type: none"> <li>- Seek discovery broadly</li> <li>- Develop strongest possible facts; do not rely on legal arguments</li> <li>- Find great experts</li> <li>- Prepare staff for testimony</li> <li>- Preparation, resiliency are key</li> </ul>	<p><b>Drafting</b></p> <ul style="list-style-type: none"> <li>- Approvals—must be in writing</li> <li>- Access—different for monitoring vs. enforcement</li> <li>- Cost recovery—include staff, broad definition of consultants, and attorneys</li> <li>- Joint and several liability is good; grantors cannot allow third party violations</li> <li>- Specify restoration costs as damages</li> <li>- Interpretation clause helps</li> </ul>	<p><b>Key documents:*</b></p> <ul style="list-style-type: none"> <li>- Drake Family Conservation Easement</li> <li>- <i>Sonoma Land Trust v. Thompson</i> <ul style="list-style-type: none"> <li>• Complaint</li> <li>• Final Statement of Decision</li> <li>• Final Judgment</li> <li>• Declaration of Terrafirma</li> </ul> </li> </ul> <p><i>*Copies available via email.</i></p>

## When to send official online written notice to Terrafirma

**April 30**

(the last day to file a claim for the previous policy year)

1

As a regulated insurance company, Terrafirma can only cover claims that meet the policy reporting requirements.

2

According to the policy, Terrafirma will only cover a claim if the land trust reports it during the policy year, or within 60 days of the end of the policy year (that is, no later than April 30).

3

Also according to the policy, Terrafirma will only cover a claim made in the policy period if nobody at the land trust knew of the challenge before the policy period.

## Examples of when to send official written notice of a challenge



Any time you have a conversation with a landowner, neighbor or concerned citizen (in person, by phone or any other way) in which they inform you of a potential violation or possible encroachment or any other looming legal challenge.



Any time you notice vegetation clearing or cutting at the property or topography changes or roads or trails.



Any time you notice a new building or any potentially prohibited structure outside the building envelope or near or over the property line.



Any time you have indication of a lawsuit, including divorces, bankruptcies, partition disputes and any other legal disputes pertaining to an insured property. Also, any time you are summoned to court, to a deposition, or to any other legal proceeding pertaining to an insured property.



Any other time you have reason to be concerned about an insured property. There is no penalty for filing a claim. Your rates will not increase and you will not be charged any extra fees. You can continue following your own procedures. Terrafirma will wait to act until you are ready.



Remember, even if you don't need money to deal with the challenge now, you should notify Terrafirma in case you eventually need to hire experts, advisers or a lawyer.